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SPOT INTERNATIONAL INC., a California limited liability company
and JOHN BERNARD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EDWIN PEREZ and CHRYSYTIAN
ALEJANDRO ORTEGA JIMENEZ an
individual, on behalf of themselves and others
similarly situated

PLAINTIFFS,

v.

SPOT INTERNATIONAL INC., A
CALIFORNIA LIMITED LIABILITY
COMPANY; JOHN BERNARD, AN
INDIVIDUAL; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. BC721323

[Case Assigned for All Purposes to Hon. Amy
D. Hogue in Dept. 7]

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiffs EDWIN PEREZ and CHRYSTIAN ALEJANDRO ORTEGA JIMENEZ,
3 individually and on behalf of the Settlement Class and the State of California, as a private attorney
4 general, on the one hand, and Defendants SPOT INTERNATIONAL INC., a California limited
5 liability company; JOHN BERNARD, an individual on the other hand.

6 This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding
7 on Plaintiffs, the current and former employees s/he seeks to represent, the Settlement Class, and
8 on Defendants and subject to the definitions, recitals, and terms set forth herein and the approval
9 of the Court.

10 **I. DEFINITIONS**

11 **1. Action**

12 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
13 California for the County of Los Angeles, entitled EDWIN PEREZ and CHRYSTIAN
14 ALEJANDRO ORTEGA JIMENEZ, an individual, on behalf of themselves and others similarly
15 situated, Plaintiffs v. SPOT INTERNATIONAL INC., a California limited liability company;
16 JOHN BERNARD, an individual, and Does 1 thru 50, inclusive, Defendants, Case No. BC721323
17 filed on September 14, 2018.

18 **2. Aggrieved Employees**

19 “Aggrieved Employees” means all persons who are employed or have been employed as a
20 non-exempt employee by SPOT INTERNATIONAL, INC., in the State of California during the
21 PAGA Period. Aggrieved Employees cannot opt out of the PAGA Payment and will receive a
22 check for the PAGA Payment even if they opt out of the Class Settlement.

23 **3. Class Counsel**

24 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
25 act as counsel for the Settlement Class.

26 **4. Class Counsel Award**

27 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
28 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this

1 Lawsuit.

2 **5. Class Information**

3 “Class Information” or “Class Data” means information regarding Settlement Class
4 members that Defendants will in good faith compile from their records and provide to the Claims
5 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each
6 Settlement Class Member’s full name; last known address; last known home telephone number;
7 social security number; dates of employment, and Compensable Work Weeks.

8 **6. Class Members or Settlement Class Members**

9 “Class Members” or “Settlement Class Members” means all persons who are employed or
10 have been employed as a non-exempt employee by SPOT INTERNATIONAL, INC., in the State
11 of California during the CLASS PERIOD.

12 **7. Class Period**

13 “Class Period” means the period from September 14, 2014 to October 15, 2020.

14 **8. Named Plaintiffs**

15 “Named Plaintiffs” means Plaintiffs EDWIN PEREZ and CHRYSTIAN ALEJANDRO
16 ORTEGA JIMENEZ.

17 **9. Named Plaintiffs Enhancement Payment**

18 “Named Plaintiffs Enhancement Payment” means the amount that the Court authorizes to
19 be paid to Plaintiffs, in addition to Plaintiffs’ Individual Settlement Payment, in recognition of
20 Plaintiffs’ efforts and risks in assisting with the prosecution of the Lawsuit and in return for
21 executing a general release with Defendants.

22 **10. Compensable Work Weeks**

23 “Compensable Work Weeks” means an estimate of the number of weeks in which
24 Settlement Class Member(s) performed work for Defendants in the State of California, excluding
25 vacation, leaves of absence, or any gaps in employment, during the Class Period based on
26 Defendants’ records.

27 **11. Complaint**

28 “Complaint” means the operative complaint, filed in the Action.

1 **12. Court**

2 “Court” means the Superior Court for the County of Los Angeles, State of California.

3 **13. Defendants**

4 “Defendants” means Defendants SPOT INTERNATIONAL INC., a California limited
5 liability company; JOHN BERNARD, an individual.

6 **14. Effective Date**

7 “Effective Date” of the Settlement means the date on which the Court’s order granting
8 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
9 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
10 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
11 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written
12 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
13 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
14 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
15 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
16 last date for filing a request for further review of the Court of Appeal’s decision passes and no
17 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
18 dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s
19 decision is requested, the day after the request for review is denied with prejudice and/or no further
20 review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of
21 the State of California affirms the Settlement.

22 **15. Final Approval Hearing**

23 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
24 reasonableness, and adequacy of the Settlement.

25 **16. Final Approval Order**

26 “Final Approval Order” means the proposed order granting final approval of the Parties’
27 settlement, in a form substantially similar to the order attached hereto as Exhibit C.

28 **17. Final Judgment**

1 “Final Judgment” means a judgment issued by the Court approving this Agreement as
2 binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties
3 within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d,
4 and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v.*
5 *Superior Court*, 46 Cal. 4th 969 (2009).

6 **18. Individual Settlement Payment**

7 “Individual Settlement Payment” means the amount paid from the Net Settlement to a
8 Participating Class Member, based upon his/her Compensable Work Weeks.

9 **19. LWDA**

10 “LWDA” means the California Labor and Workforce Development Agency.

11 **20. Net Settlement**

12 “Net Settlement” means the Gross Settlement Amount, less Court-approved Class Counsel
13 Award, Named Plaintiffs Enhancement Payment, payment to the LWDA, and Settlement
14 Administration Costs.

15 **21. Notice of Class Action Settlement**

16 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
17 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
18 Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated
19 Individual Settlement Payment. It is the notice approved by the Parties and subject to Court
20 approval explaining the terms of this Agreement and the settlement process, which the Claims
21 Administrator will mail to each Settlement Class Member.

22 **22. PAGA**

23 “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor
24 Code §§ 2699 et seq.

25 **23. PAGA Payment**

26 “PAGA Payment” means the payment made hereunder to the LWDA and the Aggrieved
27 Employees pursuant to PAGA.

28 **24. PAGA Period**

1 “PAGA Period” refers to the relevant time period for Aggrieved Employees and it
2 encompasses September 14, 2017 to October 15, 2020.

3 **25. PAGA Released Claims**

4 “PAGA Released Claims” means any and all claims for penalties pursuant to the Private
5 Attorney General Act of 2007 (“PAGA”) (Lab. Code § 2699 et seq.) disclosed to the LWDA and
6 alleged in the operative complaint for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7,
7 510, 512, 1194, 1197, and 2802.

8 **26. Participating Class Members**

9 “Participating Class Members” means those Class Members who did not file a valid and
10 timely Request for Exclusion pursuant to section III, paragraph 11 of this Agreement.

11 **27. Parties**

12 “Parties” means Plaintiffs and Defendants, collectively, and “Party” shall mean either
13 Plaintiffs or Defendants, individually.

14 **28. Payment Ratio**

15 “Payment Ratio” means the respective Compensable Work Weeks during which an
16 employee worked, in proportion to the aggregate number of workweeks worked by all Settlement
17 Class members.

18 **29. Plaintiffs**

19 “Plaintiffs” means Plaintiffs EDWIN PEREZ and CHRYSTIAN ALEJANDRO ORTEGA
20 JIMENEZ.

21 **30. Preliminary Approval Date**

22 “Preliminary Approval Date” means the date on which the Court issues an order granting
23 preliminary approval of the proposed in a form substantially similar to the order attached hereto
24 as Exhibit B.

25 **31. Released Claims**

26 “Released Claims” means any and all claims that are asserted in the operative complaint
27 and which could have been asserted based on the facts alleged in the complaint, which are or could
28 be the basis of claims for failure to pay wages/overtime pursuant to Labor Code §§ 510, 1194, and

1 1197, failure to provide meal periods pursuant to Labor Code §§ 226.7 and 512, failure to provide
2 rest periods pursuant to Labor Code § 226.7 , failure to reimburse expenses pursuant to Labor
3 Code § 2802, failure to issue lawful itemized wage statements pursuant to Labor Code § 226(a),
4 waiting time penalties pursuant to Labor Code § 203, and unfair business practices pursuant to
5 Business & Professions Code § 17200 et seq.,

6 **32. Released Parties**

7 “Released Parties” means Defendants and any of their former and present parents,
8 subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents,
9 successors, assigns, or legal representatives.

10 **33. Request for Exclusion**

11 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
12 address, and a simple statement electing to be excluded from the Settlement.

13 **34. Response Deadline**

14 “Response Deadline” means the date sixty (60) days after the Claims Administrator mails
15 the Notice of Class Action Settlement to Settlement Class members, which is the last date on which
16 Settlement Class members may: (a) submit a Request for Exclusion; (b) file and serve objections
17 to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

18 **35. Settlement**

19 “Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to
20 this Joint Stipulation of Class Action Settlement and Release of Claims.

21 **36. Claims Administrator**

22 “Claims Administrator” means the third-party company that the Parties have jointly
23 selected to be responsible for administering the Settlement. This Claims Administrator is ILYM
24 Group, Inc.

25 **37. Claims Administrator Costs**

26 “Claims Administrator Costs” means the amount to be paid to the Claims Administrator
27 from the Gross Settlement Amount for administration of this Settlement.

28 **38. Gross Settlement Amount**

1 “Gross Settlement Amount” means the agreed upon settlement amount totaling
2 \$135,000.00 to be paid by Defendants in full settlement of the Released Claims, and includes
3 without limitation the Class Counsel Award, Named Plaintiffs Enhancement Payment, Individual
4 Settlement Payments, PAGA Payment, and Claims Administrator Costs.

5 **II. RECITALS**

6 **1. Class Certification.**

7 The Parties stipulate to class certification for purposes of settlement only. If the Court does
8 not grant either preliminary or final approval of this Settlement, the Parties agree that this
9 stipulation regarding class certification will be revoked and the Parties will return to a point in
10 litigation prior to the execution of this Agreement.

11 **2. Procedural History.**

12 On September 14, 2018, Plaintiffs filed a Class Action Complaint and a notice with
13 California’s Labor and Workforce Development Agency (“LWDA”) regarding their intent to file
14 an action seeking civil penalties under PAGA. On January 11, 2019, Plaintiffs filed a First
15 Amended Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in
16 the Complaint.

17 The operative Complaint alleges claims for: (1) Failure to Pay Wages Pursuant to Labor
18 Code §§ 1194, and 1197; (2) Failure to Pay Wages for Overtime Pursuant to Labor Code §§ 510
19 and 1194; (3) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7, 512, 558, and
20 1198; (4) Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; (5) Failure to Provide
21 Accurate Itemized Wage Statements Pursuant to Labor Code §§ 226(a); (6) Penalties Pursuant to
22 Labor Code § 203; (7) Failure to Reimburse for Business Expenses Pursuant to Labor Code § 2802
23 (8) Violation of Business & Professions Code § 17200; and (9) Penalties Pursuant to Labor Code
24 § 2699, et seq.

25 After the matter was at issue, the Parties began to engage in formal discovery to understand
26 the nature of the allegations and the scope of potential liability. After a lengthy meet and confer
27 process, Defendants provided Plaintiffs’ counsel with pertinent data for the Class Members so that
28 the Parties could fully-investigate the claims at issue and understand their strengths and

1 weaknesses.

2 On October 15, 2020 the Parties attended a full-day mediation with experienced mediator
3 Michelle A. Reinglass, Esq. and with the assistance of the mediator reached a settlement, as
4 provided herein, to settle Plaintiff's claims on a class and representative-wide basis.

5 Defendants deny any liability or wrongdoing of any kind associated with the claims
6 asserted in Plaintiffs' Complaint, disputes the damages and penalties claimed by Plaintiffs, and
7 further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate
8 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
9 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
10 out this Stipulation, shall be construed or used as an admission by or against Defendants as to the
11 merits or lack thereof of the claims asserted in this Lawsuit. Defendants contend, among other
12 things, that, at all times, they have complied with all applicable state, federal and local laws related
13 to the Settlement Class members' employment.

14 The Named Plaintiffs are represented by Class Counsel. Class Counsel conducted an
15 investigation into the facts relevant to the Lawsuit, including reviewing documents and
16 information provided by Defendants. Based on their own independent investigation and
17 evaluation, Class Counsel is of the opinion that the Settlement with Defendants is fair, reasonable
18 and adequate, and in the best interest of the Settlement Class in light of all known facts and
19 circumstances, including the risks of significant delay, defenses asserted by Defendants,
20 uncertainties regarding a class and representative action trial on the merits, and numerous potential
21 appellate issues. Although Defendants deny any liability, Defendants are agreeing to this
22 Settlement solely to avoid the cost of further litigation. Accordingly, the Parties and their counsel
23 desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising
24 from or relating to the Actions on the terms set forth herein.

25 **3. Benefits of Settlement to Class Members.**

26 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
27 necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have
28 also taken into account the uncertainty and risk of the outcome of further litigation, and the

1 difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of
2 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
3 generally and in response to Defendants' defenses thereto, and the difficulties in establishing
4 damages for the Settlement Class members. Plaintiffs and Class Counsel have also taken into
5 account Defendants' agreement to enter into a settlement that confers substantial relief upon the
6 members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that
7 settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair,
8 reasonable, and adequate and is in the best interest of the putative class in light of all known facts
9 and circumstances, including the risk of significant delay, defenses asserted by Defendants,
10 Defendants' financial condition, numerous potential appellate issues, and other risks inherent in
11 litigation.

12 **4. Defendants' Reasons for Settlement.**

13 Defendants have concluded that any further defense of this litigation would be protracted
14 and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have
15 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
16 claims asserted by Plaintiffs and Settlement Class members. Defendants have also taken into
17 account the risks of further litigation in reaching its decision to enter into this Settlement. Even
18 though Defendants continue to contend that they are not liable for any of the claims set forth by
19 Plaintiffs in this Lawsuit, Defendants have agreed, nonetheless, to settle in the manner and upon
20 the terms set forth in this Agreement to put to rest the claims in this Lawsuit. Defendants contend
21 that they have complied with all applicable state, federal, and local laws.

22 **5. Settlement of Disputed Claims.**

23 This Agreement is a compromise of disputed claims. Defendants have claimed and
24 continue to claim that the Released Claims have no merit and do not give rise to liability.
25 Settlement Class members have claimed and continue to claim that the Released Claims have merit
26 and give rise to liability on the part of Defendants. This Agreement is a compromise of disputed
27 claims. Nothing contained in this Agreement, no documents referred to herein, and no action taken
28 to carry out this Agreement, may be construed or used as an admission by or against the Settlement

1 Class members or Class Counsel as to the merits or lack thereof of the claims asserted in this
2 Lawsuit.

3 **III. TERMS OF AGREEMENT**

4 **1. Release as To All Participating Class Members.**

5 As of the Class Administrator's receipt of the Gross Settlement Amount, the Participating
6 Class Members, including Plaintiffs, release the Released Parties from the Released Claims for the
7 Class Period.

8 **2. Release to all Aggrieved Employees**

9 As of the Class Administrator's receipt of the Gross Settlement Amount, the Aggrieved
10 Employees, including Plaintiffs, release the Released Parties from the PAGA Released Claims for
11 the PAGA Period.

12 **Release of Claims by Plaintiffs**

13 As of the Class Administrator's receipt of the Gross Settlement Amount,, Plaintiffs release
14 the Released Parties from all of the Released Claims during the Class Period. Plaintiffs, for
15 themselves and their heirs, successors and assigns, further waives, releases, acquits and forever
16 discharges the Released Parties from any and all claims, actions, charges, complaints, grievances
17 and causes of action, of whatever nature, whether known or unknown, which exist or may exist on
18 Plaintiffs' behalf as of the date of this Agreement, including, but not limited to, any and all tort
19 claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
20 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
21 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
22 claims, and any and all claims arising under any federal, state or other governmental statute, law,
23 regulation or ordinance, including, but not limited to, claims for violation of the FLSA, the
24 California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
25 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in
26 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
27 Rights Act of 1964, the California Fair Employment and Housing Act, the California Family
28 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California

1 Business & Professions Code §§17200 et seq., and any and all claims arising under any federal,
2 state or other governmental statute, law, regulation or ordinance.

3 Plaintiffs' releases set forth herein include a waiver of all rights under California Civil
4 Code §1542, which provides:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
6 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
7 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
8 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
9 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
10 **THE DEBTOR OR RELEASED PARTY.**

11 Plaintiffs may hereafter discover claims or facts in addition to, or different from, those
12 which they now know or believe to exist, but Plaintiffs expressly agree to fully, finally and forever
13 settle and release any and all claims against the Released Parties, known or unknown, suspected
14 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
15 of this Agreement, including, but not limited to, any and all claims relating to or arising from
16 Plaintiffs' employment with Defendants.

17 **3. Tax Liability and Medicare.**

18 The Parties make no representations as to the tax treatment or legal effect of the payments
19 called for hereunder, and Settlement Class members are not relying on any statement or
20 representation by the Parties in this regard. Except with respect to Defendants' share of the payroll
21 tax and other required withholdings under Paragraph III.15, participating Class Members
22 understand and agree that they will be responsible for the payment of taxes and penalties assessed
23 on Individual Settlement Payments received by them and will hold the Parties free and harmless
24 from and against any claims resulting from treatment of such payments as non-taxable damages,
25 including the treatment of such payment as not subject to withholding or deduction for payroll and
26 employment taxes. Moreover, this Agreement is based upon a good faith determination of the
27 Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment
28 to Medicare in contravention of 42 U.S.C. Sec. 1395y(b), especially since this is strictly a wage
and hour case. The Parties resolved this matter in compliance with both state and federal law. The
Parties made every effort to adequately protect Medicare's interest and incorporate such into the

1 settlement terms. Plaintiffs warrant that they are not a Medicare beneficiary as of the date of this
2 Agreement. Because Plaintiffs are not a Medicare recipient as of the date of this Agreement, no
3 conditional payments have been made by Medicare.

4 **4. Circular 230 Disclaimer.**

5 Each Party to this Agreement (for purposes of this section, the “acknowledging party” and
6 each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges
7 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
8 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
9 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
10 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
11 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
12 independent legal and tax counsel for advice (including tax advice) in connection with this
13 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
14 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
15 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
16 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
17 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
18 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
19 acknowledging party of the tax treatment or tax structure of any transaction, including any
20 transaction contemplated by this Agreement.

21 **5. Preliminary Approval of Settlement.**

22 Plaintiffs will move the Court to grant preliminary approval of this Settlement, certifying
23 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
24 All Parties agree to work diligently and cooperatively to have this Settlement presented to the
25 Court for preliminary approval. The proposed preliminary approval order shall provide for the
26 Notice of Class Action Settlement to be sent to Settlement Class members as specified herein.

27 **6. Claims Administrator.**

28 Within five (5) days of the Court granting preliminary approval of this Agreement,

1 Defendants shall provide the Claims Administrator with the Class Information for purposes of
2 mailing the Notice of Class Action Settlement to the Settlement Class members. No later than three
3 (3) days after receipt of the Class Information, the Claims Administrator shall notify counsel for
4 the Parties that the list has been received and state the number of Settlement Class members.

5 **7. Notice by First Class U.S. Mail.**

6 Upon receipt of the Class Information, the Claims Administrator will perform a search
7 based on the National Change of Address Database to update and correct any known or identifiable
8 address changes. Within fifteen (15) days of preliminary approval of this Settlement, the Claims
9 Administrator shall mail copies of the Notice of Class Action Settlement to all Settlement Class
10 members via regular First-Class U.S. Mail. The Claims Administrator shall exercise its best
11 judgment to determine the current mailing address for each Settlement Class Member, including
12 performing a skip-trace to identify any updated addresses. The address identified by the Claims
13 Administrator as the current mailing address shall be presumed to be the best mailing address for
14 each Settlement Class Member.

15 **8. Undeliverable Notices.**

16 Any Notice of Class Action Settlement returned to the Claims Administrator as
17 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
18 address affixed thereto. If no forwarding address is provided, the Claims Administrator shall
19 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
20 name, address and/or social security number of the Settlement Class Member whose notice was
21 undeliverable, and shall then re-mail all returned, undelivered mail within five (5) days of receiving
22 notice that a notice was undeliverable. Settlement Class members who receive a re-mailed Notice
23 of Class Action Settlement shall have their Response Deadline extended twenty (20) days from
24 the original Response Deadline.

25 **9. Disputes Regarding Individual Settlement Payments.**

26 Settlement Class members will have the opportunity, should they disagree with
27 Defendants' records regarding the dates of employment stated on their Notice of Class Action
28 Settlement, to provide documentation and/or an explanation to show contrary information by the

1 Response Deadline. If there is a dispute, the Claims Administrator will consult with the Parties to
2 determine whether an adjustment is warranted. The Claims Administrator shall determine the
3 eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
4 Agreement. The Claims Administrator's determination of the eligibility for and amount of any
5 Individual Settlement Payment shall be binding upon the Settlement Class members and the
6 Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendants'
7 records will be given a rebuttable presumption of accuracy.

8 **10. Disputes Regarding Administration of Settlement.**

9 Any disputes not resolved by the Claims Administrator concerning the administration of
10 the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
11 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
12 disputes without the necessity of involving the Court.

13 **11. Exclusions.**

14 The Notice of Class Action Settlement shall state that Settlement Class members who wish
15 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response
16 Deadline. The Request for Exclusion may be mailed, faxed, or e-mailed. The Request for
17 Exclusion: (1) should contain the name, address, and telephone number of the Settlement Class
18 Member requesting exclusion; (2) should contain a statement expressing that the Settlement Class
19 Member elects to be excluded from the Settlement; (3) should be signed by the Settlement Class
20 Member; and (4) must be postmarked e-mailed, or fax stamped by the Response Deadline and
21 returned to the Claims Administrator at the specified address or fax number. The date of the
22 postmark on the return mailing envelope, e-mail, or fax stamp on the Request for Exclusion shall
23 be the exclusive means used to determine whether a Request for Exclusion has been timely
24 submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class
25 will not be entitled to any recovery under the Settlement and will not be bound by the terms of the
26 Settlement or have any right to object, appeal, or comment thereon. Settlement Class members
27 who fail to submit a timely Request for Exclusion on or before the Response Deadline shall be
28 bound by all terms of the Settlement and any Final Judgment entered in this Lawsuit if the

1 Settlement is approved by the Court. No later than seven (7) calendar days after the Response
2 Deadline, the Claims Administrator shall provide counsel for the Parties with a complete list of all
3 members of the Settlement Class who have timely submitted a Request for Exclusion.

4 **12. Objections.**

5 The Notice of Class Action Settlement shall state that Settlement Class members who wish
6 to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing.
7 The Objection may be mailed, faxed, or e-mailed. Any written objection (“Notice of Objection”)
8 must be sent to the Claims Administrator by the Response Deadline. The date of mailing on the
9 envelope, the e-mail, or the fax shall be deemed the exclusive means for determining that a Notice
10 of Objection was timely received. The Notice of Objection must be signed by the Settlement Class
11 Member and should state: (1) the full name of the Settlement Class Member; (2) the dates of
12 employment of the Settlement Class Member; (3) the basis for the objection; and (4) if the
13 Settlement Class Member intends to appear at the final approval hearing. Class Counsel will
14 ensure that any Notice of Objection received by the Claims Administrator by the Response
15 Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties
16 may file a responsive document to any objection before the Final Approval Hearing. Any attorney
17 who will represent an individual objecting to this Settlement who has not filed a written objection
18 must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendants
19 no later than the Response Period Deadline. Class Counsel shall not represent any Settlement Class
20 members with respect to any such objections. Any Class Member may appear at the final approval
21 hearing to object to the Settlement whether they submitted a timely written objection or not.

22 Any Class Member who fails to submit a timely written objection or to present an objection
23 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
24 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

25 **13. No Solicitation of Settlement Objections or Exclusions.**

26 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
27 time shall any of the Parties or their counsel seek to solicit Settlement Class members to submit
28 either written objections to the Settlement or requests for exclusion from the Settlement, or to

1 appeal from the Court's Final Judgment.

2 **14. Funding and Allocation of Gross Settlement Amount.**

3 The Gross Settlement Amount shall be paid in ten (10) equal monthly installments paid on
4 the first of the month commencing on December 1, 2020. The money shall be held in trust by
5 Mohajerian APC and in the cases that the Court does not grant final approval of the Settlement,
6 any payments made by Defendant shall be returned to Defendants. Assuming the Settlement is
7 ultimately approved by the Court, the final payment by Defendants shall be made no later than
8 September 1, 2021. Once the Settlement is finally approved by the Court, Mohajerian APC shall
9 wire the payments received to its trust account pursuant to this Settlement to the Settlement
10 Administrator within five (5) days of the entry of the order finally approving the Settlement.

11 The Settlement Administrator shall have fourteen (14) days upon receipt of the funds to
12 distribute the Gross Settlement Amount.

13 **15. Net Settlement.**

14 The Net Settlement will be determined by the Claims Administrator by subtracting the
15 Class Counsel Award, Named Plaintiffs Enhancement Payment, PAGA Payment, and Claims
16 Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement is
17 \$48,500.00. The Parties estimate the amount of the Net Settlement as follows:

Gross Settlement Amount:	\$	\$135,000.00
Named Plaintiffs Enhancement Payment:	\$	\$10,000.00 (<i>\$5,000 to each of the Named Plaintiffs</i>)
Class Counsel Fees:	\$	\$45,000.00
Class Counsel Costs:	\$	\$14,500.00
PAGA Payment	\$	\$10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to remain in the Net Settlement)</i>
Claims Administrator Costs:	\$	\$5,500.00
Net Settlement	\$	\$52,500.00

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25 This is a non-reversionary Settlement in which Defendants are required to pay the entire
26 Gross Settlement Amount, which includes, the Class Counsel Award, Named Plaintiffs
27 Enhancement Payment, Individual Settlement Payments, PAGA Payment, and Claims
28 Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendants.

1 Defendants' share of payroll taxes and other required withholdings from Individual Settlement
2 Payments, including but not limited to Defendants' FICA and FUTA contributions, shall be paid
3 separately from, and in addition to, the Gross Settlement Amount.

4 **16. Individual Settlement Payments.**

5 Individual Settlement Payments will be paid from the Net Settlement and shall be paid
6 pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be mailed
7 by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address
8 within seven calendar days after Defendants make the final settlement payment. All Individual
9 Settlement Payments will be allocated as follows: twenty percent (20%) as wages and eighty
10 percent (80%) as interest and statutory penalties. All PAGA Payments will be allocated as one
11 hundred percent (100%) penalties.

12 **17. PAGA Payments to Aggrieved Employees**

13 Every Aggrieved Employee will receive a PAGA Payment Settlement Check regardless
14 of whether they opt out of the Settlement as described in Paragraph 3.11 above. Each Aggrieved
15 Employee will be mailed a check for their share of the PAGA Payment. If an Aggrieved Employee
16 does not opt out of the Class Settlement, they will receive their PAGA Payment in the same check
17 as their Individual Payment. If an Aggrieved Employee does opt out of the Class Settlement, they
18 will receive a check for their PAGA Payment only.

19 **18. Class Member's Payment Ratio.**

20 Participating Class Members will be paid on a pro-rata basis. A Participating Class
21 Member's Individual Settlement Payment will be based on the number of Compensable
22 Workweeks during which s/he worked in proportion to the aggregate number of workweeks
23 worked by all Participating Settlement Class members.

24 Aggrieved Employees will be paid their share of the PAGA Payment (\$2,500) on a pro rata
25 basis. An Aggrieved Employee's PAGA Payment will be based on the number of pay periods
26 worked in proportion to the aggregate number of pay periods worked by all Aggrieved Employees.

27 **19. Payment to Class Member.**

28 Checks shall be made payable to each Participating Class Member for payment of each

1 Participating Class Member's Individual Settlement Payment as set forth in section III, paragraph
2 16 of this Agreement.

3 **20. Form of Payment to Class Member.**

4 The Individual Settlement Payment amount due to each Participating Class Member shall
5 be paid in the form of a check to each Participating Class Member and that check will include their
6 share of the PAGA Payment. Any Class Member who opts out of the Class Settlement will receive
7 a check for their share of the PAGA Payment only

8 **21. Unclaimed Settlement Payment(s).**

9 After one hundred and eighty (180) days of the mailing of the Individual Settlement
10 Payment checks and/or PAGA Payment checks, funds attributable to unclaimed, undeliverable, or
11 expired Individual Settlement Payment checks will be transmitted to the State of California Office
12 of the Controller Unclaimed Property Fund in the name of the Participating Class Member who
13 did not cash his/her Settlement check. The expiration date of the checks shall be stated on all
14 distributions to the Class Members. Before the Class Member checks are mailed, the Claims
15 Administrator shall update the Class Member addresses using the National Change of Address
16 Database. The Claims Administrator shall use reasonable search methods for all checks returned
17 as undeliverable and must re-mail checks to addresses ascertained within three (3) business days
18 of the return of the check.

19 **22. Named Plaintiffs Enhancement Payment.**

20 Plaintiffs will request that the Court approve a Named Plaintiffs Enhancement Payment of
21 up to \$10,000.00 (\$5,000 to each of the Named Plaintiffs). Subject to Court approval, in exchange
22 for the release of all Released Claims and for their time and effort in bringing and prosecuting this
23 matter, Plaintiffs shall be paid a Named Plaintiffs Enhancement Payment of up to \$10,000.00
24 (\$5,000 to each of the Named Plaintiffs). The Named Plaintiffs Enhancement Payment shall be
25 paid to Plaintiffs from the Gross Settlement Amount within ten (10) calendar days after Defendants
26 make the final settlement payment. The Claims Administrator shall issue an IRS Form 1099 –
27 MISC to Plaintiffs for their respective Named Plaintiffs Enhancement Payment. Plaintiffs shall
28 be solely and legally responsible to pay any and all applicable taxes on their Named Plaintiffs

1 Enhancement Payment and shall hold harmless Defendants and Class Counsel from any claim or
2 liability for taxes, penalties, or interest arising as a result of the Named Plaintiffs Enhancement
3 Payment. The Named Plaintiffs Enhancement Payment shall be in addition to the Plaintiffs'
4 Individual Settlement Payment as a Settlement Class Member. Any amount requested by Plaintiffs
5 for the Named Plaintiffs Enhancement Payment and not granted by the Court shall return to the
6 Net Settlement and be distributed to Participating Class Members as provided in this Agreement.

7 **23. Class Counsel Award.**

8 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
9 thirty-three and one-third percent (33.33%) (\$45,000.00) of the Gross Settlement Amount
10 (\$45,000.00). Class Counsel will request that the Court approve the reimbursement of any
11 litigation costs or expenses associated with Class Counsel's prosecution of this matter from the
12 Gross Settlement Amount not to exceed \$14,500.00. So long as there are no objections, Class
13 Counsel shall be paid any Court-approved fees and costs no later than ten (10) calendar days after
14 Defendants make the final settlement payment. Class Counsel shall be solely and legally
15 responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
16 Claims Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments
17 made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class
18 Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class
19 Counsel for the Class Counsel Award and not granted by the Court shall return to the Net
20 Settlement and be distributed to Participating Class Members as provided in this Agreement.

21 **24. Claims Administrator Costs.**

22 The Parties agree to allocate up to \$5,500.00 of the Gross Settlement Amount for Claims
23 Administrator Costs. The Claims Administrator shall have the authority and obligation to make
24 payments, credits and disbursements to Settlement Class members in the manner set forth herein,
25 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
26 The Parties agree to cooperate in the Settlement administration process and to make all reasonable
27 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.

28 **25. Responsibilities of the Claims Administrator.**

1 The Claims Administrator shall be responsible for the following: processing and mailing
2 payments to Plaintiffs, Class Counsel, and Participating Class Members; printing, and mailing the
3 Notice of Class Action Settlement and tax forms to the Participating Class Members as directed
4 by the Court; receiving and reporting the requests for exclusion and objections submitted by
5 Settlement Class members; providing declaration(s) as necessary in support of preliminary and/or
6 final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders
7 the Claims Administrator to perform. The Claims Administrator shall keep the Parties timely
8 apprised of the performance of all Claims Administrator responsibilities.

9 **26. Claims Administrator Fees.**

10 The Claims Administrator shall be paid the Claims Administrator Costs within ten (10)
11 calendar days after Defendants make the final settlement payment.

12 **27. Payment to the LWDA.**

13 A total payment of \$10,000.00 from the Gross Settlement Amount will be allocated as the
14 PAGA Payment to be paid as penalties under the Labor Code Private Attorneys General Act of
15 2004, to the LWDA. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA
16 and the remaining twenty-five (25%) shall be included in the Net Settlement distributed to putative
17 class members. The remaining \$2,500.00 shall be distributed to the Aggrieved Employees on a
18 pro rata basis as described in Paragraphs III.17 and III.18.

19 **28. Final Approval Hearing and Entry of Final Judgment.**

20 Upon expiration of the Response Deadline, with the Court's permission, a final approval
21 hearing shall be conducted to determine final approval of the Settlement along with the amount
22 properly payable for: (i) the Class Counsel Award; (ii) the Named Plaintiffs Enhancement
23 Payment; (iii) Individual Settlement Payments; (iv) the Claims Administrator Costs; and (v)
24 PAGA Payment.

25 **29. Final Approval Order.**

26 Plaintiffs will request, and Defendants will concur in said request, that the Court enter,
27 after the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit
28 B. Plaintiffs will request that the Final Approval Order certify the Settlement Class; find that

1 this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties
2 to carry out the provisions of this Agreement.

3 **30. Nullification of Settlement Agreement.**

4 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
5 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as
6 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
7 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
8 of this Settlement shall be treated as void from the beginning. If one or more of such events occur
9 causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects
10 as if this Agreement had not been executed, except that any fees already incurred by the Claims
11 Administrator shall be paid by the party terminating the Settlement. The return of any paid
12 Settlement funds to Defendants shall occur no later than five (5) business days after one or more
13 of the triggering events leading to nullification occurs. In the event an appeal is filed from the
14 Court's Final Judgment, or any other appellate review is sought, administration of the Settlement
15 shall be stayed pending final resolution of the appeal or other appellate review, but any fees
16 incurred by the Claims Administrator prior to it being notified of the filing of an appeal from the
17 Court's Final Judgment, or any other appellate review, shall be paid to the Claims Administrator
18 by Defendants within thirty (30) days of said notification.

19 **31. Increase in Class Members.**

20 It was represented to Class Counsel that the Settlement Class is estimated to be 50 people.
21 Upon receipt of the Class Data, the Claims Administrator shall confirm to Plaintiffs that the Class
22 Data is consistent with these representations. To the extent the number of Settlement Class
23 members increases beyond 50 by more than 5%, Defendants shall have the option to increase the
24 Gross Settlement Amount by a proportionate amount. For example, if the number of Settlement
25 Class members increases by 6%, Defendants shall increase the Gross Settlement Amount by 6%.
26 If the increase causes an increase of the cost of Settlement Administration beyond the amount that
27 has been approved by the Court, Defendants shall separately bear the increased cost of Settlement
28 Administration outside of the Gross Settlement Amount. If Defendants fail to increase the Gross

1 Settlement Amount proportionately or remit payment of the increased cost of Settlement
2 Administration, Plaintiffs shall have the right to terminate this Agreement and the Parties will be
3 restored to their positions prior to the Settlement and the Settlement shall be null and void.

4 **32. No Effect on Employee Benefits.**

5 Amounts paid to Plaintiffs or other Settlement Class members pursuant to this Agreement
6 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
7 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
8 of Plaintiffs or Settlement Class members.

9 **33. No Admission by Defendants.**

10 Defendants deny any and all claims alleged in this Lawsuit and deny all wrongdoing
11 whatsoever. This Agreement is not a concession or admission and shall not be used against
12 Defendants as an admission or indication with respect to any claim of any fault, concession, or
13 omission by Defendants.

14 **34. Exhibits and Headings.**

15 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
16 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
17 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
18 Agreement are inserted for convenience of reference only and do not constitute a part of this
19 Agreement.

20 **35. Interim Stay of Proceedings.**

21 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil
22 Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the
23 proceedings necessary to implement and complete the Settlement.

24 **36. Amendment or Modification.**

25 This Agreement may be amended or modified only by a written instrument signed by
26 counsel for all Parties or their successors-in-interest and court approval.

27 **37. Entire Agreement.**

28 Apart from the fully-executed Memorandum of Understanding, which the Parties

1 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
2 entire Agreement among these Parties, and no oral or written representations, warranties, or
3 inducements have been made to any Party concerning this Agreement or its Exhibits other than
4 the representations, warranties, and covenants contained and memorialized in the Agreement and
5 its Exhibits. The Parties are entering in to this Agreement based solely on the representations and
6 warranties herein and not based on any promises, representation, and/or warranties not found
7 herein.

8 **38. Authorization to Enter into Settlement Agreement.**

9 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
10 whom they represent to negotiate this Agreement and to take all appropriate actions required or
11 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
12 execute any other documents required to effectuate the terms of this Agreement. The Parties and
13 their counsel will cooperate with each other and use their best efforts to affect the implementation
14 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
15 any document needed to implement the Settlement, or on any supplemental provisions that may
16 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
17 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
18 Defendants represent and warrant that they are authorized to sign this Agreement on behalf of
19 Defendants. Plaintiffs represent and warrant that they are authorized to sign this Agreement and
20 that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-
21 party.

22 **39. Binding on Successors and Assigns.**

23 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
24 of the Parties hereto, as previously defined.

25 **40. California Law Governs.**

26 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
27 according to the laws of the State of California.

28 **41. Counterparts.**

1 This Agreement may be executed in one or more counterparts. All executed counterparts
2 and each of them shall be deemed to be one and the same instrument.

3 **42. Jurisdiction of the Court.**

4 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
5 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
6 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
7 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
8 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
9 connection therewith. All terms of this Agreement are subject to approval by the Court.

10 **43. Invalidity of Any Provision.**

11 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
12 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
13 as to define all provisions of this Agreement valid and enforceable.

14 WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class members, and
15 Defendants have executed this Agreement as of the dates set forth below.

16 **IT IS SO AGREED:**

17
18 Dated: _____

By: _____
EDWIN PEREZ

19
20 Dated: marzo 18, 2021

By:  _____
9B5F8C95667F4FD...
CHRISTIAN ALEJANDRO ORTEGA
JIMENEZ

21
22
23
24 Dated: _____

By: _____
SPOT INTERNATIONAL INC., a California
limited liability company; JOHN BERNARD, an
individual

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6 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
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8 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
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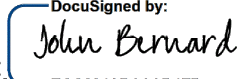
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18 Dated: _____

By: _____
EDWIN PEREZ

19
20 Dated: _____

By: _____
CHRYSYTIAN ALEJANDRO ORTEGA
JIMENEZ

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22
23
24 Dated: 3/25/2021

By:  _____
ECC684ADAAAD4FD...
SPOT INTERNATIONAL INC., a California
limited liability company; JOHN BERNARD, an
individual

1 **APPROVED AS TO FORM AND CONTENT:**

2 Dated: March 25, 2021

KINGSLEY & KINGSLEY APC

3
4 By:  _____

5 Eric B. Kingsley
6 Liane Katzenstein Ly
7 Attorneys for Plaintiffs and the Proposed Class

8 Dated: March 25, 2021

MOHAJERIAN APC

9 By:  _____

10 Al Mohajerian
11 Attorneys for Defendants SPOT
12 INTERNATIONAL INC. and JOHN BERNARD
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